

NOV 29 2004U.S. v. Williams, 03-10400

KLEINFELD, Circuit Judge, dissenting:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I respectfully dissent.

This was a case without witnesses. The prosecution did not present live testimony at trial from either of the two prostitute victims. Instead, they used a video deposition and a purported expert as substitutes.

The video tape deposition violated Williams's right to "confront[] . . . the witnesses against him"¹ because he did not have the "opportunity for cross examination"² when the video deposition was taken. He did not waive his right to be present at the video deposition. Williams, an indigent residing in Chicago, was given one day's notice of a deposition in Las Vegas with no offer of the money to get there. One day, during the holidays when an airplane seat might not even be available, and without an offer of a fare, denied him a fair opportunity to confront the only percipient witness in the case.

¹ U.S. CONST. amend. VI.

² Crawford v. Washington, 124 S.Ct. 1354, 1374 (2004).

Dr. Lee, purporting to be an expert on prostitutes and drawing inferences from such terms of endearment as “daddy” and “angel,” essentially substituted as a witness for the underage prostitute whom Dr. Lee had never met. The relevance of her testimony was mostly for the credibility of the underage prostitute, but since the government did not put the underage prostitute on the stand, I cannot see much relevance. There was no predicate for Dr. Lee’s testimony that an underage prostitute would probably testify falsely to protect her pimp where the underage prostitute did not testify at all. The prejudicial nature of her testimony, exemplified by her insinuation, based on her purported knowledge of other people, that Williams had his prostitutes pimp out their children for infant fellatio, outweighed whatever, if any, probative value her testimony may have possessed.